IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Second Appeal No. 196/2004

Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	**Court's or Judge's Orders.**

CORAM : **A.P. Lavande,J**
DATE : 27th September, 2006

Heard Shri Kadukar, learned counsel for the appellant and Shri Khedkar, learned counsel for the respondents.

2. By this second appeal, the appellant/ plaintiff takes exception to the Judgment and decree passed by the First Ad hoc District Judge, Bhandara dated 23.1.2004 in Regular Civil Appeal No. 56/2001 allowing the appeal preferred by the respondents/ defendants against the Judgment and decree dated 18.12.1999 passed by the Civil Judge, Junior Division, Pauni in Regular Civil Suit No. 55/94. The plaintiff filed the above suit seeking declaration and injunction in respect of the suit property. It is the case of the plaintiff that the suit property was gifted by the defendant no.1 to the father of the plaintiff and pursuant to the said gift he is in possession of the suit property. The trial court after appreciating the evidence led by the parties held that the plaintiff had not proved the oral gift in favour of the plaintiff and as such

had failed to prove the title in his favour. However, the trial court granted relief of injunction holding that the plaintiff had proved his possession and the defendants had not proved title to the suit property. The lower appellate court upon re-appreciation of the evidence oral and documentary led by the parties held that the plaintiff had failed to prove possession of the suit property and consequently allowed the appeal dismissing the suit filed by the plaintiff. Mr. Kadukar, the learned counsel appearing for the appellant/plaintiff submitted that the finding given by the lower appellate court that the plaintiff has not proved his possession is contrary to the evidence and as such perverse. According to Mr. Kadukar, the defendants had also not proved the title and, therefore, the plaintiff was entitled to the relief of injunction sought for by the plaintiff.

3. Per contra, Mr. Khedkar, learned counsel appearing on behalf of the respondents submitted that the findings of the lower appellate Court that the respondents are in possession and that the plaintiff has failed to prove his possession are based upon proper appreciation of the evidence led by the parties. He has further submitted that the finding given by the trial court that the plaintiff had not proved his title has become final inasmuch as no cross-objection was filed by the plaintiff in the appeal filed by the respondents before the lower

appellate Court.

4. I have considered the submissions made by the learned counsel for the parties. In so far as the declaration is concerned, since the trial court has refused the relief of declaration to the plaintiff which admittedly the plaintiff did not challenge in appeal filed by the defendants the same has become final and as such it has to be taken that the plaintiff has no title to the suit property. In so far as the possession is concerned having perused both the Judgments I am satisfied that the findings recorded by the lower appellate court that the plaintiff has not proved possession in respect of the suit property and that the defendants were in possession of the suit property, cannot be said to be contrary to the evidence on record and, therefore, perverse. In any event, the plaintiff having failed to prove his title by way of oral gift, cannot now contend that the defendant no.1 had no title to the suit property. That being the position, the relief of injunction at the instance of the plaintiff against the defendant no.1 who had title to the suit property could not have been granted and rightly the appellate court has not granted the same.

5. Upon perusal of the impugned Judgment I find that no interference is called for in the Judgment of the lower appellate court. In any case, no substantial

question of law is involved in the appeal and hence the appeal is dismissed.

C.A. No. 8102/04: In view of the dismissal of the appeal, this application has become infructuous. Hence, the application is dismissed as infructuous.

Judge

patle